IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 19589 of 2007(S)

AGAINST THE ORDER DATED / / IN IA 1589/2007 IN OP.588/2000 of FAMILY COURT,ERNAKULAM

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PETITIONER:

JIJO PAUL, AGED 38 YEARS,
S/O PAILEE, PONNANIKKAT HOUSE,
PARIYAPURAM P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:

SHERLY, AGED 32 YEARS,
D/O ELIYAS, KEECHERIMALIL HOUSE,
PERUMPILLY P.O., MULANTHURUTHY,
ERNAKULAM DISTRICT.

BY ADV. SRI.JAIJI ITTEN
SRI.PRAMOD JAIJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.19589/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE IA. 1589/07 FILED BY THE PETITIONER BEFORE OF THE FAMILY COURT, ERNAKULAM.

EXT.P2:- COPY OF THE ORDER IN IA. NO.1589/07 IN OP. NO.588/2000 OF THE FAMILY COURT, ERNAKULAM DT. 19.4.07.

/TRUE COPY/

P.A. TO JUDGE

tss

KURIAN JOSEPH,

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T.R.RAMACHANDRAN NAIR, JJ.

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WP(C).No.19589 of 2007-S.

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Dated this the 27th day of July, 2007.

J U D G M E N T

T.R.Ramachandran Nair, J.

The writ petition filed by the petitioner challenging Ext.P2 order of the Family Court, Ernakulam dismissing IA.No.1589/2007 in OP.No.588/2000. The petitioner herein was the respondent in OP.No.588/2000. It was filed by the respondent to recover an amount of Rs.1,00,000/- with 18% interest per annum from 29.6.1992 and also 17 sovereigns of gold ornaments from him. According to the petitioner, during the pendency of the case he met with an accident and that resulted in his absence before the Family Court and he was made exparte on 5.4.2004. IA.No.427/2005 is to set aside the exparte order which was filed along with IA.No.427(a) of 2005 to condone the delay of 306 days in filing the application. It is averred that on 5.4.2005 the Family Court allowed the application on condition of payment of Rs.5,000/-.

2. Thereafter, the petitioner could not muster enough money in a

month to comply with the condition imposed by the Family Court. The respondent was proceeding with the execution petition also in the meanwhile. The petitioner hence filed IA.No.1589/2007 seeking extension of time for compliance of the order in IA.No.427(a)/2005 after condoning the delay of 306 days for payment of costs of Rs.5,000/- and also to furnish security for the claim amount in OP.No.588/2000. This was dismissed by the Family Court as per the above order after noticing that the petitioner was absent.

3. The learned counsel for the petitioner submitted that he could not comply with the condition because of financial constraints and he may be given a further opportunity to comply with the same. The learned counsel for the respondent opposed the said prayer. The order of the Family Court shows that it was mainly for the default of the petitioner that the application was dismissed. After hearing the parties at length we feel that in the interests of justice, one more opportunity has to be given to the petitioner to contest the matter.

4. When the case came up for hearing on 2.7.2007 learned counsel for the petitioner submitted that the petitioner is prepared to deposit the amount of Rs.5,000/- towards costs of the proceedings before this Court and also to pay the costs as ordered by the court below. Therefore, the writ petition is disposed of quashing Ext.P2. IA.No. 1589/2007 will stand allowed

on condition of deposit of Rs.5,000/- as ordered by the Family Court within one month. On such deposit the Family Court will proceed with the matter in accordance with law. No costs.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-